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JUN 22 2005

OFFICE OF PETITIONS

In re Application of	:	
Thomas Eyhorn	:	ON PETITION
Application No. 10/775,463	:	
Filed: February 10, 2004	:	
Attorney Docket No. WAS 0618 PUS	:	

This is a decision on the petition under 37 CFR 1.137(b), filed May 4, 2005, to revive the above-identified application.

The petition is **DISMISSED**.

Any request for reconsideration of this decision must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition Under 37 CFR 1.137(b)." This is not a final agency decision.

On June 28, 2004, petitioner expressly abandoned the above-identified application pursuant to 37 CFR 1.138. On July 20, 2004, the Office mailed a Notice of Abandonment, stating that the application was abandoned in view of the letter of express abandonment signed by an attorney of record. On December 20, 2004, petitioner filed a petition under 37 CFR 1.137(b). In a letter dated April 22, 2005, the Office stated that the petition was not treated on the merits because the petition fee was insufficient. On May 4, 2005, petitioner filed the present petition and the amount due for the petition fee.

The provisions of 37 CFR 1.137(b) provide that where the delay in reply was unintentional, a petition may be filed to revive an abandoned application or a lapsed patent pursuant to 37 CFR 1.137(b). A grantable petition pursuant to 37 CFR 1.137(b) must be accompanied by:

- (1) The reply required to the outstanding Office action or notice, unless previously filed. In a nonprovisional application abandoned for failure to prosecute, the required reply may be met by the filing of a continuing application. In a nonprovisional utility or plant application filed on or after June 8, 1995, and abandoned for failure to

(2) The petition fee as set forth in 37 CFR 1.17(m);

(4) Any terminal disclaimer (and fee set forth in § 1.20(d)) required pursuant to paragraph (d) of this section.

In the present petition, petitioner asserts that the above-identified application became abandoned unintentionally by petitioner's attorney's mistaken filing of an Express Abandonment under 37 CFR 1.138 on June 28, 2004.

Here, the only explanation petitioner has supplied in the petition is that the above-identified application became abandoned unintentionally by petitioner's attorney's mistaken filing of an Express Abandonment under 37 CFR 1.138. Petitioner has not explained how this mistake occurred or the circumstances surrounding the event. Therefore, petitioner has not made a sufficient showing that the delay was unintentional.

In any renewed petition, petitioner should include a thorough explanation as to why petitioner's attorney's mistake in filing an Express Abandonment under 37 CFR 1.138 can reasonably be considered unintentional.

Further correspondence with respect to this matter should be addressed as follows:

By mail:

Mail Stop Petition
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

By FAX: (703) 872-9306
Attn: Office of Petitions

By hand: Customer Service Window
Mail Stop Petition
Randolph Building
401 Dulany Street
Alexandria, VA 22314

Telephone inquiries concerning this matter may be directed to the undersigned at (571) 272-3211.

Christina Tartera Donnell

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